

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Rules and Regulations Implementing The  
Telephone Consumer Protection Act of 1991

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CG Docket No. 05-338  
FCC 05-206

**COMMENTS OF CONSUMER BANKERS ASSOCIATION ON  
NOTICE OF PROPOSED RULEMAKING**

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Dated: January 18, 2006

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The Consumer Bankers Association (“CBA”) welcomes this opportunity to comment in response to the Commission’s Notice of Proposed rulemaking (“*NPRM*”) concerning the amendment of its unsolicited facsimile advertising rules to implement the Junk Fax Prevention Act of 2005 (“Junk Fax Act”).<sup>1</sup> This rulemaking proceeding affords the Commission an opportunity to fashion regulations that will carry out Congress’s intention to accommodate the rights and interests of both senders and recipients of facsimile advertising and other commercial information.

Among other issues addressed in these comments, the CBA urges the Commission to recognize the longstanding relationships between lenders and the brokers and other intermediaries that deliver the lenders’ financing products to consumers. Those arrangements serve consumers best when lenders and their business partners can exchange information promptly, and in written form, concerning the terms that lenders are prepared to make available to borrowers. The use of facsimile messages for that purpose is a matter of longstanding

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<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005*, Notice of Proposed Rulemaking, CG Docket No. 02-278, CG Docket No. 05-338, FCC 05-206 (Dec. 9, 2005) (“*NPRM*”).

business practice and should be recognized in the Commission's definition of the established business relationship exception mandated by the Junk Fax Act.

## INTRODUCTION AND SUMMARY

The *NPRM* directs commenters to “include a short and concise summary of the substantive discussion and questions raised in the *NPRM*” and strongly encourages commenters to “track the organization set forth in the *NPRM* in order to facilitate the Commission's internal review process.”<sup>2</sup> These comments comply with those directions and suggestions.

### *Synopsis of the NPRM*

The *NPRM* initiates the Commission's implementation of the Junk Fax Prevention Act of 2005.<sup>3</sup> Specifically, the Commission proposes to: (1) remove section 64.1200(a)(3)(i) of the Commission's current rules; (2) take comment on whether the Commission should define what it means for a person to provide a facsimile number within the context of an EBR; (3) amend the Commission's current rules to permit senders to send fax advertisements to persons with whom an EBR was formed prior to July 9, 2005; (4) adopt a definition of the established business relationship (“EBR”) that will permit the sending of facsimile advertisements between parties to those relationships; (5) consider the establishment of time limits on the duration of an EBR; (6) consider the need for a definition of the circumstances under which an opt-out notice will be sufficiently “clear and conspicuous” for purposes of the Junk Fax Prevention Act, and take comments on the content of such a definition; (7) adopt a time period to implement the statute's “shortest reasonable time” requirement for honoring a do-not-fax request; (8) consider ways of implementing, and minimizing the burden of, the statute's identification requirements; (9) consider whether to exempt small business senders from the requirement to provide a cost-

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<sup>2</sup> *NPRM*, ¶ 40.

<sup>3</sup> Junk Fax Prevention Act of 2005, Pub. L. No. 109-21, 119 Stat. 359 (2005)(“Junk Fax Act”).

free mechanism for a recipient to transmit a do-not-fax request; (10) take comment on the need to enumerate the types of “cost-free mechanisms” that may be used for that purpose; (11) consider whether a do-not-fax request terminates an EBR exemption even if the recipient continues to do business with the sender; (12) specify, if appropriate, that if the sender of a fax advertisement is a third party agent or fax broadcaster, any do-not-fax request sent to the sender will extend to the underlying business on whose behalf the fax is transmitted; (13) take comment on whether a sender must honor opt-out requests sent through channels other than those designated by the sender for that purpose; (14) consider whether a sender has the burden of proving that a recipient who previously gave a do-not-fax request made a subsequent, express invitation to the sender to send a fax advertisement; (15) consider whether to allow non-profit organizations to send unsolicited fax advertisements to their membership that do not contain an opt-out notice; (16) consider whether any methods of giving permission, other than a writing, should be permitted for purposes of the new statutory definition of “unsolicited advertisement.”

#### *Questions Addressed in These Comments*

Of the issues set out in the *NPRM*, CBA offers its comments on: (1) the circumstances under which a person has “provided” a fax number for purposes of the EBR definition; (2) the content of the proposed EBR definition; (3) the proposal to establish EBR time limits; (4) the location of the required do-not-fax notice; (5) the “shortest reasonable time” requirement; (6) whether a sender must honor opt-out requests made through channels not designated by the sender for that purpose; (7) methods of giving permission to send a fax advertisement; (8) the scope and duration of do-not-fax requests; and (9) the effective date of the proposed rule. In response to these questions, CBA requests that the Commission:

- Not attempt to specify the circumstances under which fax numbers are voluntarily provided to a sender;

- Not require senders to investigate the methods by which directory publishers acquire fax numbers;
- Adopt an EBR definition that includes relationships between lenders and intermediaries that have standing contracts with those lenders;
- Not address the question of EBR time limits until the findings required by the Junk Fax Act have been made;
- Not impose time limits on business-to-business EBRs;
- Require opt-out notices to appear on the sender's fax cover sheet or, where a cover sheet is not used, on the first page of the fax message;
- Adopt a "shortest reasonable time" standard of 30 days for implementation of opt-out requests;
- Not require senders to honor opt-out requests sent through communications channels that the senders have not designated for that purpose;
- Not enumerate permitted methods of giving a prior, express invitation to send a fax advertisement;
- Provide that opt-out requests will be effective for five years from the time they are made;
- Permit senders to provide both limited and global opt-out opportunities; and
- Make the rules adopted in this proceeding effective one year after their adoption.

Each of these recommendations is discussed in detail below.

## **DISCUSSION**

### **I. THE COMMISSION SHOULD NOT ATTEMPT TO DEFINE THE CIRCUMSTANCES UNDER WHICH FAX NUMBERS ARE VOLUNTARILY PROVIDED AND SHOULD NOT REQUIRE SENDERS TO INVESTIGATE THE METHODS BY WHICH DIRECTORIES CONTAINING FAX NUMBERS ARE COMPILED**

In order to take advantage of the Junk Fax Act's EBR provisions, a sender must have "obtained the number of the [recipient's] telephone facsimile machine through . . . the voluntary communication of such number, within the context of such established business relationship, or . . . a directory, advertisement, or site on the Internet to which the recipient voluntarily agreed

to make available its facsimile number for public distribution.”<sup>4</sup> The Commission asks whether it should establish “parameters defining what it means for a person to provide a facsimile number ‘within the context of an established business relationship.’”<sup>5</sup> The Commission also asks whether a sender who obtains a fax address from a directory, advertisement or Internet site should “be required to make reasonable efforts to confirm with the entity that compiled the numbers that the recipients have ‘voluntarily’ agreed to allow them to be made publicly available.”<sup>6</sup>

As to the first question, it is unlikely that any rule will anticipate all of the methods and circumstances under which fax numbers are voluntarily provided to parties to a business relationship. A rule that tries to list all of the permitted methods and circumstances will risk omitting other methods and circumstances that also meet the Junk Fax Act requirements. The standard set out in the statute, that there must be a “voluntary” communication of the number in the context of the relationship between the parties, is sufficiently clear to guide the conduct of senders and recipients.

As to the second question, senders of faxes should not be required to investigate how publishers of fax numbers obtained those numbers. Such investigations will be burdensome and largely fruitless, because directory compilers have no obligation to cooperate with senders’ investigations and are unlikely to respond promptly and fully -- if at all -- to an ongoing flood of inquiries from fax senders concerning their compilation methods. Accordingly, the suggested investigations would burden senders without benefiting recipients and should not be required.

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<sup>4</sup> *NPRM*, ¶ 8.

<sup>5</sup> *Id.* ¶ 10.

<sup>6</sup> *Id.*



Finally, in the event the Commission imposes an investigation or verification requirement concerning recipients' fax numbers, that requirement should not apply to fax numbers acquired by senders before the effective date of the Commission's rules. A contrary determination would require a massive effort to investigate the circumstances under which existing fax numbers were acquired – an effort that would meet with even less cooperation from directory publishers than a forward-looking rule would cause.

## **II. THE COMMISSION'S EBR DEFINITION SHOULD RECOGNIZE THE BUSINESS RELATIONSHIPS BETWEEN LENDERS AND THE INTERMEDIARIES THAT OBTAIN MORTGAGES AND AUTO FINANCING FOR CUSTOMERS**

The *NPRM* requests comment on a proposed definition of “established business relationship.” The CBA urges the Commission to adopt an EBR definition that recognizes the important business relationships between lenders and the various intermediaries that arrange for the ultimate delivery of financing to consumers. Mortgage lending and the financing of automobile purchases, in particular, rely heavily on such arrangements.<sup>7</sup>

In the mortgage industry, CBA members provide loans through various business partners, including mortgage brokers, mortgage bankers and other entities that help customers obtain wholesale or retail financing for real property purchases. (We will refer to this group of intermediaries generically as “business partners” or “brokers.”) All of these business partners have contracts with CBA members that set out the terms of the relationships between the parties.

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<sup>7</sup> As the Commission has previously pointed out, “independent brokers and agents often play an important role in these types of financial transactions . . . .” *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Request of State Farm Mutual Automobile Insurance Company for Clarification and Declaratory Ruling*, Declaratory Ruling, CG Docket No. 02-278, DA 05-2293, ¶ 4 & n.16 (CGB Aug. 17, 2005) (“*State Farm*”); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Second Order on Reconsideration, 20 FCC Rcd 3788, 3798 (2005) (“*Second Recon Order*”).

The brokers generally have such contracts with a number of lenders, and shop among those lenders for products that will satisfy their clients' needs.

In order to determine which lenders' products are appropriate for their customers, brokers must at all times have detailed, up-to-date information on the rates and other terms available from potential lenders. Because brokers expect this information to be provided both promptly and in written form, the most useful method of communicating this information is by means of fax messaging. Accordingly, the custom in the mortgage industry is for lenders to send frequent rate sheets, pricing announcements (including special promotions) and other documents that present essential product information. Lenders send these announcements and updates to fax numbers furnished to the CBA members by agents or employees of the business partners.

Financing of automobile purchases also is arranged by intermediaries -- in this case, auto dealers -- that have standing contracts with a number of lenders. Banks, credit unions, independent finance companies, and the financing arms of auto companies enter into contracts with automobile dealers that set out the conditions under which these lenders will purchase retail installment contracts and leases from automobile dealers. Such contracts allow a dealer to take a credit application from the customer at the dealership and "shop" the application to a number of lenders to determine which will offer the customer the most favorable terms.

As in the mortgage industry, auto dealers need up-to-date information on the rates and other terms available from the various lenders with which the dealers have non-exclusive contracts. For this purpose, lenders send current information by means of fax messaging at numbers provided by the dealers, usually at the outset of the relationship.

In both the mortgage and auto financing lines of business, the parties expect that fax updates and product information will be provided as appropriate, so long as the business relationship between the parties continues.

The EBR definition proposed in the *NPRM* may reasonably be read as already including the relationships between lenders and intermediaries, which typically are initiated (as the proposed rule requires) by an “inquiry” or “application” from the intermediary to the lender regarding the lender’s “products or services.”<sup>8</sup> Accordingly, under the proposed definition, those relationships constitute EBRs unless and until they have been “terminated by either party.”<sup>9</sup> Because those relationships are defined by contracts, they are not terminated until the contract term expires or one or both of the parties terminates the relationship.

Although the proposed EBR definition therefore includes the relationships between lenders and intermediaries, later changes to the rule might make that result less clear. Specifically, if the Commission should choose to impose time limits on EBRs, along the lines of the 18/3 limits presently prescribed under the telemarketing rules, the result might be to suggest that lender/intermediary relationships lose their EBR status within a certain time after the intermediary’s most recent inquiry, application or transaction with the lender.<sup>10</sup> This interpretation would be contrary to the intent of the parties to these arrangements, who expect to exchange rate sheets and other information for at least as long as the underlying contract is in effect, regardless of the time elapsed since their last transaction. To avoid this result, the

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<sup>8</sup> *NPRM*, ¶ 14

<sup>9</sup> *Id.*

<sup>10</sup> As the CBA discusses further below, no record presently exists that meets the statutory requirement for imposition of time limits on the EBR relationship. As the CBA also points out, the Commission should not impose time limits or, in the alternative, should impose those time limits only on EBRs between senders and residential subscribers. *See infra*, pp. 9-11.

Commission should expressly include these relationships within any EBR definition it adopts.

For this purpose, the CBA proposes the following EBR definition, which is identical to the language proposed in the *NPRM* except for the italicized clause:

For purposes of paragraph (a)(3) of this section, the term established business relationship means a prior existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange or consideration, on the basis of an inquiry, application, purchase, or transaction by the business or residential subscriber regarding products or services offered by such person or entity, *or on the basis of a contract between a lender and an intermediary for the placement of the lender's financing with the intermediary's clients*, which relationship has not been previously terminated by either party.<sup>11</sup>

If the Commission declines to include the recommended language in its EBR definition, the CBA requests a declaratory ruling to the effect that the intermediary relationships described herein are EBRs for purposes of the Junk Fax Act of 2005.

### **III. THE COMMISSION SHOULD NOT IMPOSE EBR TIME LIMITS ON BUSINESS-TO-BUSINESS FAX TRANSMISSIONS, AND SHOULD NOT CONSIDER THE QUESTION OF TIME LIMITS UNTIL AFTER THE FINDINGS MANDATED BY THE STATUTE HAVE BEEN COMPLETED**

The *NPRM* requests comment on the need for time limits on the EBR exception, and specifically asks commenters to justify the adoption of time limits different from those already applicable to EBRs under the telemarketing rules.<sup>12</sup>

As a threshold matter, the CBA notes that consideration of an EBR time limit in this proceeding is premature. The Junk Fax Act requires the Commission to complete a number of steps before adopting such a rule.<sup>13</sup> One of those steps -- the requirement that no such rule be considered until three months after the effective date of the statute -- has been satisfied. Other

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<sup>11</sup> The language proposed by the FCC is referenced in paragraph fourteen of the *NPRM*.

<sup>12</sup> *NPRM*, ¶¶ 16-18.

<sup>13</sup> 47 U.S.C. § 227(b)(2)(G).

requirements, however, including the assessment of the record of complaints occasioned by faxes sent under the statutory (*i.e.*, not time-limited) EBR definition, cannot be satisfied until after the Commission has enacted, and acquired a significant record of experience with, the statutory definition. Accordingly, the Commission should treat any comments received on the time limitation issue pursuant to the present *NPRM* as preliminary. The Commission should adopt an EBR without time limits pursuant to this *NPRM*, and should, if appropriate, initiate a further notice of proposed rulemaking on the question of time limits after the requisite record of complaints has been made and reviewed.

Accordingly, and as a matter of preliminary comment, the CBA notes that if time limits are adopted, they should apply only to fax advertisements sent to residential subscribers. The time limits adopted in the telemarketing context were based upon the Commission's specific finding that "*consumers* are confused and even frustrated more often when they receive calls from companies that they have not contacted or done business with for many years."<sup>14</sup> This finding, which was based upon a record concerning telemarketing calls to residential subscribers, cannot simply be carried over to the business-to-business context. As the above description of lender/intermediary relationships shows, businesses often *do* expect to receive information by fax from "companies that they have not contacted or done business with for many years."<sup>15</sup> Under the Junk Fax Act, those businesses can simply make do-not-fax requests if they wish to terminate EBRs based upon past inquiries or transactions, or based upon ongoing contracts to which they are parties.

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<sup>14</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14079 (2003) ("*TCPA Order*") (emphasis added).

<sup>15</sup> *Id.*

Finally, and in the event the Commission decides that time limits are appropriate in the context of business-to-business EBRs, the Commission should take into account the lender/intermediary relationships described above. Specifically, the Commission should find that where the sender has an EBR with the recipient based upon a standing lender/intermediary contract, any time limit should begin to run only when that contract lapses by its terms or is terminated by one or both of the parties. As pointed out earlier, to count an EBR time limit as starting on the date of the last transaction or inquiry between the parties to such a contract would be contrary to longstanding practices and expectations within the mortgage and automobile finance industries.<sup>16</sup>

#### **IV. THE OPT-OUT NOTICE SHOULD APPEAR ON THE FAX COVER SHEET**

The *NPRM* also asks for comment on the implementation of the statutory requirement that a “clear and conspicuous” opt-out notice appear “on the first page of the unsolicited advertisement.”<sup>17</sup>

CBA does not believe that the Commission should attempt to explicate the meaning of “clear and conspicuous” in this context. The Federal Trade Commission and other consumer protection authorities have interpreted “clear and conspicuous” and similar expressions for many years without detailed statutory guidance, and this Commission can do the same without needlessly confining the broad language of the statute.

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<sup>16</sup> If the Commission adopts an EBR time limit for faxes sent to residential subscribers, it should confirm that “the existence of a financial agreement, including bank accounts, loans, insurance policies and mortgages, constitute ongoing business relationships that permit a company to contact consumers for the duration of the financial agreement or contract” and for the time period set in the rules thereafter. *See Second Recon Order*, 20 FCC Rcd at 3798; *see also State Farm*, ¶ 4. As the Commission previously has found in the telemarketing context, such an ongoing financial agreement constitutes an EBR for as long as it is in effect.

<sup>17</sup> *NPRM*, ¶ 19.

The Commission should, however, clarify the location requirement for the opt-out notice. The *NPRM* already has introduced some confusion by referring to placement of the notice “on the first page of the facsimile” rather than using the statutory phrase “first page of the unsolicited advertisement.”<sup>18</sup> Faced with this conflicting guidance, senders might reasonably choose to place the notice on the fax cover sheet, on the first page of the facsimile message, or on the first page of the message that actually contains advertising material. Under a statute with a private right of action, such ambiguities will breed vexatious lawsuits that challenge good-faith decisions concerning placement of the opt-out language.

The CBA recommends that the Commission interpret the statutory phrase “first page of the unsolicited advertisement” as referring to the facsimile cover sheet or, where a cover sheet is not used, the first page of the fax message, regardless of whether that first page contains advertising. Such a rule will avoid confusion; it also will facilitate compliance by permitting senders to place standard opt-out language on their cover sheets, rather than integrating that language separately in each fax message they create.

## **V. THIRTY DAYS SHOULD BE THE “SHORTEST REASONABLE TIME” STANDARD**

The *NPRM* also requests suggestions as to the “‘shortest reasonable time’ within which a sender of unsolicited facsimile advertisements must comply with a request not to receive future facsimile advertisements from the sender,” and notes that “the Commission’s rules require that persons or entities making calls for telemarketing purposes must honor a do-not-call request . . . [within] thirty days from the date of such request.”<sup>19</sup> The Commission suggests that the

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<sup>18</sup> Junk Fax Prevention Act, Sec. 2(c) and *NPRM*, ¶ 19.

<sup>19</sup> *NPRM*, ¶ 20.

imposition of a different “shortest reasonable time” in the case of fax advertisements must be supported by empirical evidence.<sup>20</sup>

The CBA supports the adoption of the same thirty-day compliance period for opt-out requests in both the telemarketing and fax advertising contexts. The compliance burdens in both contexts are similar, and a uniform “shortest reasonable time” standard will simplify compliance for affected entities.

## **VI. SENDERS SHOULD NOT BE REQUIRED TO HONOR OPT-OUT REQUESTS SENT THROUGH CHANNELS THEY HAVE NOT DESIGNATED**

The *NPRM* also asks whether a sender of fax advertisements should, for example, “be required to honor a [do-not-fax] request made by mail or e-mail even if such addresses are not necessarily provided by the sender in the facsimile communication’s ‘opt-out’ notice?”<sup>21</sup>

Neither the statute nor any reason of public policy supports this proposal. The Junk Fax Act requires that the sender’s opt-out notice include “a domestic contact telephone and facsimile number for the recipient to transmit [a do-not-fax request] to the sender,” and a “cost-free mechanism for a recipient to transmit a request pursuant to such notice to the sender of the unsolicited advertisement . . . .”<sup>22</sup> This language requires only that the sender provide its telephone and fax numbers and choose a toll-free mechanism for opt-out notices, which mechanism must be clearly and conspicuously presented to recipients. The requirement to choose such a toll-free mechanism will be meaningless if the sender’s choice can be ignored.

Besides its inconsistency with the statute, such a requirement would hamper senders’ compliance efforts. Under the statute, senders can establish a single toll-free telephone number

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* ¶ 25.

<sup>22</sup> 47 U.S.C. § 227(b)(2)(D)(iv).



or other mechanism that can be specifically monitored by personnel who are trained to process do-not-fax requests. Communications from recipients that are received from other channels cannot realistically be monitored for this purpose with equal efficiency, because those channels will not be staffed by do-not-fax compliance specialists and because opt-out requests will be “buried” in thousands of unrelated messages. A single, dedicated point of toll-free contact, clearly communicated to recipients, will avoid such confusion and facilitate compliance with the statute and the Commission’s rules.

Finally, a rule that makes a sender responsible for opt-out notices sent through non-designated channels increases the likelihood of vexatious litigation. Such a rule invites recipients to send requests through methods that are deliberately chosen because of the probability that the messages will be overlooked. Congress cannot have intended to invite such frivolous litigation.

## **VII. METHODS OF GIVING PRIOR, EXPRESS INVITATION OR PERMISSION TO SEND FAXES SHOULD NOT BE FURTHER SPECIFIED IN THE RULES**

The Junk Fax Act defines an “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.”<sup>23</sup>

The *NPRM* asks for comments on “what other forms of permission,” besides written permission, should be recognized by the rules.<sup>24</sup>

In the CBA’s view, any further specification of the meaning of the term “or otherwise” risks prohibiting legitimate methods of permission that the rules may have overlooked. Instead of narrowing the scope of the statutory term, the Commission should keep the open-ended

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<sup>23</sup> *Id.* § 227(a)(5).

<sup>24</sup> *NPRM*, ¶ 30.

expression that Congress intended. If disputes arise concerning the adequacy of particular recipients' methods of extending invitations or permissions, the Commission can resolve those disputes on a case-by-case basis.

### **VIII. OPT-OUT NOTICES SHOULD BE GOOD FOR FIVE YEARS**

As the Commission concluded in its rulemakings concerning telemarketing calls, the public interest does not require that company-specific do-not-call requests must be of indefinite duration. Accordingly, in order to balance "any administrative burden on consumers in requesting not to be called with the interests of telemarketers in contacting consumers," the Commission adopted a ten-year retention period for records of such do-not-call requests, and later shortened that period to five years.<sup>25</sup>

The Commission must engage in a similar balancing exercise in this proceeding. As in the telemarketing context, there is no public-interest requirement that the effect of do-not-fax requests must be of indefinite duration, and a reasonable time limit on retention of records of those requests is appropriate. The CBA suggests that the Commission should adopt, for this purpose, the same five-year retention period that applies to company-specific do-not-call requests under the present telemarketing rules.

### **IX. LIMITED OPT-OUTS SHOULD BE PERMITTED**

Facsimile messages may contain various types of content and may serve various purposes. For example, in the course of relationships between lenders and intermediaries, fax transmissions from lenders might include rate sheets, announcements of changes in the terms of the relationship between the parties, special promotions and descriptions of products and services other than those the intermediary presently handles.

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<sup>25</sup> *TCPA Order*, 18 FCC Rcd at 14068.

The interests of all parties will be served if recipients can make do-not-fax requests that are limited only to those types of communications the recipient no longer wishes to receive. A rule that permits such limited opt-outs might be modeled on the CAN-SPAM Act of 2003, which allows the sender of a commercial electronic mail message to provide the recipient with a list or menu that allows the recipient to choose which types of messages it wishes to receive from the sender, as long as this menu also includes an option to opt out from receiving all future commercial email messages from the sender.<sup>26</sup> In the case of fax advertising, such a rule would serve the interests of senders and recipients without in any way diluting the opt-out requirements of the Junk Fax Act.

**X. THE RULES SHOULD NOT TAKE EFFECT UNTIL AT LEAST ONE YEAR FROM THE DATE OF THEIR ADOPTION**

This and other agencies have delayed the effective date of rules that imposed compliance burdens similar to those proposed in this *NPRM*. So, for example, the Federal Trade Commission's rules implementing the customer privacy provisions of the Gramm-Leach-Bliley Act were adopted on May 24, 2000, became effective on November 13, 2000, but did not require full compliance before July 1, 2001.<sup>27</sup> In this case, fax advertisers must review their fax practices on an enterprise-wide basis, identify those organizations and messages that require compliance, and put systems in place for collecting and honoring opt-out requests. A minimum of one year should be permitted for these compliance efforts. Such a schedule will permit more complete compliance and should obviate the need for piecemeal requests to extend the effective date of the rules.

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<sup>26</sup> Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003), codified at 15 U.S.C. §§ 7701-13; 18 U.S.C. §§ 1001, 1037; 28 U.S.C. § 994; and 47 U.S.C. § 227, at § 5(3)(B).

<sup>27</sup> Federal Trade Commission, Privacy of Consumer Financial Information, 65 Fed. Reg. 33646 (May 24, 2000).

## CONCLUSION

The CBA and its members use facsimile messaging to provide information of value to consumers, and to the brokers and other intermediaries who work with those consumers to finance major purchases. Those financing arrangements, including home mortgages and auto loans, fuel transactions that are vital to the health of the U.S. economy. The rules adopted in this proceeding should facilitate, rather than hamper, the efficiency of these important markets.

The CBA believes that the suggestions made in these comments will, if adopted, further the public interest and protect the rights of all parties.

Respectfully submitted,

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Dated: January 18, 2006

## **CERTIFICATE OF SERVICE**

I hereby certify that on January 18, 2006, a copy of the foregoing **COMMENTS** was served by electronic mail upon the following:

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